



Docket No. 15689.60

In re application of

) Art Unit  
) 2661

Customer No.: 022913

AJL:ds  
DS0000002302V001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Masafumi Usuda et al.

RECEIVED

AUG 06 2004

OFFICE OF PETROLEUM'S

) Art Unit  
) 2661

Saba Tsegaye

022913

Mail Stop - Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

This is a request to accept correspondence as timely filed under 37 C.F.R. §1.10(e). On December 17, 2003, an Office Action (paper number 9) was mailed by the United States Patent and Trademark Office (hereinafter referred to as “the Office”) to the applicants’ attorney for the above-identified patent application. As noted in the accompanying “Verified Statement of Adrian J. Lee” included as Exhibit A (hereinafter referred to as “the Verified Statement”), the further salient facts are the following. On March 17, 2004, the attorney representing the applicants’ (hereinafter referred to as “applicants’ attorney”) properly mailed by Express Mail a response (hereinafter referred to as “the Response”) to the Office Action to the Office. On Thursday, July 22, 2004, applicants’ attorney received a telephone call from the Examiner of the

above-identified patent application. During that conversation, it became clear to the applicants' attorney that the Office lacked evidence that the Response had been received by the Office.

Upon subsequent inquiry internal to the law firm of applicants' attorney, applicants' attorney discovered ample evidence showing that the Office did receive the Response, though the Office currently appears to lack evidence of receipt. 37 C.F.R. §1.10(e) allows for the granting of a petition for correspondence to be considered as timely filed if five conditions are met.

First, 37 C.F.R. §1.10(e) requires that the correspondence be mailed as set forth in 37 C.F.R. §1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" services of the United States Postal Service (hereinafter referred to as "the USPS"). Enclosed herewith as Exhibit B is a copy of the Response and all other correspondence as mailed by Express Mail (hereinafter collectively referred to as "the Correspondence"). Attached as Exhibit C is a copy of the Express Mail receipt evidencing the deposit by Express Mail with the USPS. The Express Mail receipt shows that the "Express Mail Post Office to Addressee" service was indeed employed. Furthermore, the total postage and fees were sufficient to accomplish delivery. The provisions of 37 C.F.R. §1.1(a) were also satisfied as the Commissioner of Patents was listed as the recipient with the correct address for the Commission of Patents as specified in 37 C.F.R. §1.1(a)(1)(i).

Second, 37 C.F.R. §1.10(e)(1) states that the petition must be filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence. Here, applicants' attorney only became aware on July 22, 2004 of that the Office lacked evidence of receipt of the Correspondence. Considering the complexity associated with preparing this petition with appropriate supporting documentation and the verified statement, the undersigned respectfully submits that a seven working day response time should be considered prompt.

Third, 37 C.F.R. §1.10(e)(2) states that the number of the "Express Mail" mailing label be placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail". As evidenced by the true and correct copy of the Correspondence included in Exhibit B, the Express Mail mailing label was placed on the Correspondence.

Fourth, 37 C.F.R. §1.10(e)(3) states that the petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in", and a copy of any other official notation by the USPS relied upon to show the date of deposit. As previously mentioned, a copy of the Correspondence is included in Exhibit B. A copy of the returned postcard receipt is included in Exhibit D. Note the postcard receipt date properly stamped by the Office as being March 17, 2004. A copy of the "Express Mail" mailing label is included in

Exhibit C. Note the "date in" field being properly marked March 17, 2004. The USPS has also stamped the "Express Mail" mailing label with their official stamp indicating a deposit date of March 17, 2004. Although the returned postcard incorrectly indicates the number of pages in the Amendment to be 7, the number of pages in the Amendment is actually 15 as correctly stated in the Certificate of Mailing accompanying the Correspondence copied in Exhibit B. In the accompanying Verified Statement, the applicants' attorney states under penalty of perjury that the Correspondence in Exhibit B is indeed a true copy of the Correspondence actually submitted to the Office, which Correspondence includes an Amendment of 15 pages.

Fifth, 37 C.F.R. §1.10(e)(4) states that the petition must include a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence are true copies of the originally mailed correspondence. Such a statement is included in the accompanying Verified Statement in Exhibit A (see items 4 through 6 of the Verified Statement).

In view of the foregoing, Applicants request that the Correspondence included in Exhibit A accepted as timely filed on the date originally transmitted (March 17, 2004).

Respectfully submitted this 2nd day of August, 2004.

Respectfully submitted,



ADRIAN J. LEE

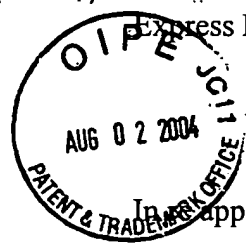
Registration No. 42,785

Attorney for Applicants

Customer No.: 022913

DAC

08-03-04



Express Mail Label No.: E 510294546 US

PATENT APPLICATION

Docket No.: 15689.60

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE #10

In application of

Masafumi Usuda et al.

RECEIVED

Serial No.: 09/693,377

AUG 06 2004

) Art Unit  
) 2661

Filed: October 20, 2000

CERTIFICATE OF DEPOSITION

Conf. No.: 8613

For: TRANSMISSION METHOD OF DOWNLINK  
PILOT CHANNEL IN CDMA MOBILE  
COMMUNICATION SYSTEM, AND CDMA  
MOBILE COMMUNICATION SYSTEM

Examiner: Saba Tsegaye

Customer No.: 022913

CERTIFICATE OF EXPRESS MAIL UNDER 37 C.F.R. § 1.10

I hereby certify that the following documents are being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to: Mail Stop – Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 2<sup>nd</sup> day of August 2004.

- Transmittal Letter (1 page)
- Request to Accept Correspondence As Timely Filed (3 pages)
- Exhibit A: Verified Statement of Adrian J. Lee
- Exhibit B: copy of the Correspondence as deposited with the United States Postal Service on March 17, 2004
- Exhibit C: copy of the Express Mail receipt evidencing the mailing of the Correspondence by Express Mail
- Exhibit D: copy of the returned postcard provided by the Office
- Postcard

Respectfully submitted,

ADRIAN J. LEE  
Attorney for Applicant  
Registration No. 42,785  
Customer No. 022913